

REMARKS

This paper is responsive to the Office Action dated August 7, 2007. Claims 1 - 47 are pending in this application and have been rejected. Reexamination is respectfully requested.

Priority

Applicant appreciates the examiner's acknowledgement of applicant's claim for priority under 35 USC § 119. Furthermore, applicant submits with this response a translation of applicant's foreign priority paper JP 2002-230343, filed in Japan on August 7, 2002.

Double Patenting

Claims 1, 12, and 18 have been rejected on the grounds of nonstatutory obviousness type double patenting as being unpatentable over claims 1, 11 and 27 of US patent 6,787,383. In response, applicant submits with this response a Terminal Disclaimer.

Claim Rejections - 35 USC § 112

At page 5, the examiner has made certain rejections under 35 USC § 112. The rejection of claim 1, lines 10 and 11 with respect to the term "the stack" is respectfully traversed. Claim 1 at line 4, describes the layers that are stacked which are the

first conductivity type cladding layer, active layer and second conductivity type cladding layer. This is clearly the stack referred to at claim 1, line 10 and provides antecedent basis.

Claim 1, at lines 10 - 12, has been rejected because the examiner asserts that it is not clear whether the stack is converted into a contact layer or whether the GaAs layer is converted into a contact layer. This rejection is respectfully traversed. Initially, the examiner should note that the order of the stacking is stated in claim 1, lines 1 - 4. Next, it is stated that there is annealing of the stack in order to allow In to diffuse into the ITO transparent electrode layer into the GaAs layer to thereby convert it into a contact layer composed of In-containing GaAs. The word "it" can only refer to the GaAs because the subsequent contact layer is composed of In containing GaAs. Still further, the word "it" follows the term "GaAs". This means that the word "it" refers to the immediately proceeding composition. Stated another way, the word "it" merely means "the GaAs layer".

Claims 11, 20, 32 - 36 and 45 - 47 have been rejected under 35 USC § 112 because the examiner asserts that the term "wherein the intermediate layer and the contact layer are formed over the entire surface of the light-emitting layer section in this order" is not clear. This rejection is respectfully traversed. First, it should be noted that claims 11 and 34 depend from claim 9, claims 32 and 35 depend from claim 28, claims 33 and 36

depend from claim 29, claims 20 and 46 depend from claims 17, and claims 45 and 47 depend from claim 18. With respect to claims 11 and 34, as noted above, they depend from claim 9. Claim 9 resolves the ambiguity that the examiner asserts exists in claims 11 and 34. Claim 9, from which claims 11 and 34 depend, recites the contact layer and the intermediate layer. Claim 9 states that the intermediate layer is formed between the contact layer and either cladding layer. Similarly, this limitation is found in claims 28, 29, 17 and 18. This limitation requires that the claims rejected (claims 11, 20, 32 - 36 and 45 - 47) be interpreted as the examiner has stated at page 5, lines 4 and 3 up from the bottom where the examiner states, "the contact layer are stacked vertically over the entire surface of the light-emitting layer section in this order". On the other hand, the examiner's alternative interpretation that the contact layer and intermediate layer are side by side (bottom of page 5, top of page 6) is incompatible with the parent claims which are all like claim 9 as described above. For this reason, the rejection of these claims is respectfully traversed.

Claim Rejections - 35 USC § 102(e)

Claims 1 - 47 have been rejected under 35 USC § 102(e) as being anticipated by US Patent 6,787,383 (Ikeda, et al.). Applicant respectfully traverses this rejection for the reason which follows.

Applicant application number 10/523,636 (this application), as shown on the Filing Receipt, has domestic priority based upon a 371 of PCT/JP2003/09979 filed August 6, 2003. Still further, applicant claims the Japanese priority of JP 2002-230343 which was filed on August 7, 2002.

Applicant, therefore, is entitled to a priority date under 35 USC § 119, 35 USC § 365 and 35 USC § 371. As noted above, applicant submits with this response a translation of the priority document JP 2002-230343 and a declaration of translation accuracy.

US Patent 6,787,383 was filed in the United States on September 26, 2002 and enjoys a 35 USC § 102(e) date of September 26, 2002. However, applicant's priority date for this application is August 7, 2002. Since, applicant's priority date precedes that of the filing date of the '383 patent, applicant's priority date is first and overcomes the rejection under 35 USC § 102(e). The '383 patent does not constitute prior art under 35 USC § 102(e).

In view of the foregoing, it is respectfully submitted that the application is now in condition for allowance, and early action in accordance thereof is requested. In the event there is any reason why the application cannot be allowed in this current condition, it is respectfully requested that the Examiner contact the undersigned at the number listed below to resolve any


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problems by Interview or Examiner's Amendment.

Respectfully submitted,


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